

Prepared for:
U.S. Department of Education
Federal Student Aid
Business Operations

Entity Reviewed:
Nelnet
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Lincoln, Nebraska 68508

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U.S. Department of Education
Federal Student Aid
Financial Institution Oversight Service - Southern Division

Internal Review Report

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A. Review Information

SID Number: 700580

Program Review Control Number (PRCN): 20144065006

Name and Address:

Nelnet
121 South 13th Street
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Lincoln, Nebraska 68508

Dates of Review: July 21, 2014, through July 25, 2014

Review Period: June 17, 2009, through April 30, 2014

B. Entity Information

On June 17, 2009, Nelnet signed a Title IV Additional Servicers (TIVAS) contract with the U.S. Department of Education (ED) to service Federal Family Education Loan (FFEL) Program loans purchased from lenders under the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA). Nelnet also participated in the Asset-Backed Commercial Paper Conduit Put Program, which continued to sell loans to ED until the program expired on January 19, 2014. With the passage of the SAFRA Act, the contract was extended to include servicing of William D. Ford Federal Direct Loan (Direct Loan) Program loans. Nelnet received approval from Federal Student Aid (FSA) to participate in the Common Origination and Disbursement (COD) System process on June 18, 2010. The FFEL and Direct Loan programs are authorized by Title IV of the Higher Education Act of 1965, as amended (HEA).

Nelnet TIVAS has been assigned loans rehabilitated by FSA's Default Division since April 27, 2012.

Background

The SCRA provides a wide range of protections for individuals entering or called to active duty in the military or servicemembers already deployed. In regard to FFEL loans and Direct Loans, the SCRA limits the interest rate a borrower may be charged on a loan made to the servicemember entering qualifying military service to 6 percent. When the servicemember ends a period of active duty military service, the interest rate should return to the original rate. The six percent interest rate applies during any period during which the borrower is on active duty military service.

The SCRA's interest rate limit first became applicable to the FFEL and Direct Loan programs with the passage of the August 14, 2008, Higher Education Opportunity Act (HEOA), which amended §§428(d) and 438 of the HEA to incorporate the SCRA's interest rate limitation.

The Department's Dear Colleague Letter (DCL) GEN-08-12/FP-08-10, issued in December 2008, and included guidance to FFEL loan holders regarding the application of the SCRA for FFEL Program and Direct Loan Program loans.¹ On page 120 the DCL noted that the interest rate limitation applied to borrowers in active duty military service as of August 14, 2008, but did not apply to an endorser of a PLUS loan unless the borrower is also performing eligible active duty military service. The DCL also stated that:

. . . Under the SCRA, the borrower must contact the creditor (loan holder) in writing to request the interest rate adjustment and provide a copy of the borrower's military orders. For this purpose, the term "in writing" may include a borrower's email request the term "copy of the borrower's military orders" includes a scanned copy of the orders attached to that email request. . . The Department will apply the SCRA interest rate limit to Direct Loan borrowers in the same manner.

On October 29, 2009, the Department published final regulations in the Federal Register that included changes to implement the SCRA interest rate cap. The regulations became effective July 1, 2010. The final regulations added 34 CFR §682.202(a)(8) which provides:

The charges that lenders may impose on borrowers, either directly or indirectly are limited to the following:

(a) *Interest.* The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) and (a)(8) of this section.

(8) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (a)(4) of this section, effective August 14, 2008, upon the loan holder's receipt of the borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on FFEL Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

The final regulation also changed the Direct Loan Program regulations at 34 CFR §685.202(a)(4), to similarly provide:

(4) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (3) of this section, effective August 14, 2008, upon the Secretary's receipt of a borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on Direct Loan Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

¹ Section C.1.4.3 (Constraints) of NELNET's TIVAS contract states that "[t]he contractor(s) will be responsible for maintaining a full understanding of all federal and state laws and regulations and FSA requirements and ensuring that all aspects of the service continue to remain in compliance as changes occur." The Department's DCL system provides FSA program direction and compliance guidance.

On December 12, 2013, FSA issued Change Request (CR) 2278 which states that “FSA needs to ensure that active duty personnel are receiving the active duty student loan benefits they are entitled to receive.” This CR instructs all of FSA’s servicers to “...do a match with the Department of Defense (DoD) database to identify active duty military personnel for purposes of applying active duty military benefits to eligible loan recipients.” On April 7, 2014, FSA issued CR 2409 which states that the “[t]he servicers shall outreach to all eligible active duty personnel identified in the DoD match (per CR 2278) and ongoing annually.... The servicers should track the results of this outreach activity and report to FSA any problems or successes with this effort.” On May 19, 2014, CR 2658 instructed the TIVAS to use the Defense Manpower Data Collection (DMDC) database to “...replace the requirement for the receipt of orders...as long as the servicer notifies the service member that the benefit is being applied and provides the service member an opportunity to request additional information.” Nelnet has implemented CR 2658.

C. Review Objectives

The objective of this review was to determine whether eligible borrowers of eligible FFEL loans and Direct Loans received the benefit of the 6 percent interest rate cap provided by the SCRA in accordance with applicable statutes and the Department’s regulations and guidance.

D. Purpose and Scope of Review

The purpose of this review was to:

- (1) Determine whether Nelnet complied with all Departmental statutes, regulations, guidance in determining whether a borrower was eligible to receive the interest rate cap provided by the SCRA, and
- (2) Ensure that eligible borrowers who met the requirements for the interest rate cap under the SCRA were granted the benefit on all their eligible federal student loans.

Financial Institution Oversight Service (FIOS) conducted a program review at Nelnet from July 21, 2014, through July 25, 2014. The review covered the period June 17, 2009, (the effective date of Nelnet’s TIVAS contract) through April 30, 2014. The review was limited to loans owned by the Department and serviced by Nelnet under the TIVAS contract. The review did not cover whether Nelnet applied the SCRA interest rate cap on FFEL loans it held and loans it serviced for other holders or private student loans.

E. Summary of Element Reviewed

FIOS selected a statistically-valid random sample of 99 loans, representing 99 distinct borrowers, from a National Student Loan Data System (NSLDS) population of 18,934 unique records of FFEL loans and Direct Loans owned by the Department and serviced by Nelnet under the TIVAS contract that reflected a military deferment or a military grace period granted from June 17, 2009, through April 14, 2014 and which had an interest rate in excess of 6%. These 18,934 records represent 8,120 records for 5,259 FFEL Program borrowers and 10,814

records for 8,888 DL borrowers. FIOS used its standard expected deviation rate of 0.0%, tolerable deviation rate of 3%, and confidence rate of 95%, based on the population of 18,934 records, to arrive at the sample size of 98, as defined by IDEA data analysis software. FIOS exceed the expected confidence level by increasing the sample number to 99.

Element: Servicemembers Civil Relief Act

Borrowers in active duty military service may have the interest rate charged on eligible FFEL Program and Direct Loan Program limited to 6 percent. Under the Department's regulations, to receive the benefit of the interest rate cap under the SCRA during the period covered by the review², the borrower must have provided the servicer with a written request for the benefit and a copy of the appropriate military orders. These documents may be provided in paper form or by email. In some cases, a representative with the borrower's power of attorney may present the documents on behalf of the borrower. The servicer must grant the benefit based on the military orders provided and may use information obtained through the DMDC system to augment the information in the request.

Methodology:

FIOS interviewed key Nelnet officials responsible for servicing loans under the TIVAS contract, including the company's Director of Enrollment Processing, Manager of Enrollment Processing, Trainer of Enrollment Processing, Analyst of Enrollment Processing and Manager of External Audit. FIOS reviewed Nelnet's processes and procedures to ensure that they adhered to the requirements in the HEOA and the Department's regulations, policies and other guidance in regard to SCRA. To determine active duty military service dates and SCRA eligibility, data from NSLDS, Nelnet's internal system and borrower records was reviewed and any inconsistencies were reconciled. For all loans in the sample, copies of monetary transaction histories, collection activity histories, and deferment histories were also reviewed.

All samples were tested to determine whether Nelnet:

- Notified the borrower that they may be eligible for the SCRA interest rate cap,
- Granted the SCRA interest rate cap when the borrower requested the benefit in writing and submitted a copy of their military orders, and applied the interest rate cap to all eligible loans, both FFEL Program and Direct Loan Program loans,
- Denied the SCRA interest rate cap in accordance with the Department guidelines,
- Granted the interest rate cap for the correct time period for borrowers approved for the SCRA interest rate cap, and
- Adjusted the SCRA interest rate cap back to the original interest rate if the borrower left active duty military service or was otherwise found to be ineligible for the SCRA interest rate cap.

² Since the period covered by the review, the Department has changed the process for insuring that eligible borrowers receive the benefit of the interest rate cap under the SCRA.

Results:

For the 99 borrowers tested:

- Nelnet did not notify borrowers of their potential eligibility. Notifying a borrower of their potential SCRA eligibility was not required during the period covered by the review.
- 4 borrowers requested the SCRA interest rate cap:
 - Nelnet granted the SCRA interest rate cap to 4 borrowers.
 - Nelnet correctly granted the benefit to 4 borrowers.
 - Nelnet incorrectly granted the benefit to zero borrowers
 - Nelnet denied the SCRA interest rate cap to zero borrowers:
 - Nelnet correctly denied the benefit to zero borrowers.
 - Nelnet incorrectly denied the benefit to zero borrowers.
 - Nelnet used incorrect active duty military service dates to determine the benefit period for zero of the 4 borrowers granted the benefit.
 - The issue of whether Nelnet correctly adjusted the interest rate back to the original interest rate was not applicable because 3 borrowers who received the benefit are still in that status and 1 borrower received a retroactive adjustment for the period in which the borrower was eligible.

There were no issues identified.

F. Conclusion

There are no issues to report.